A

DAMANSARA REALTY BHD v. BUNGSAR HILL HOLDINGS SDN BHD & ANOR

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
UMI KALTHUM ABDUL MAJID JCA
B VERNON ONG LAM KIAT JCA
[CIVIL APPEAL NO: W-01(IM)-3-01-2015]
6 APRIL 2018
[2018] CLJ JT(3)

C ***CIVIL PROCEDURE:*** *Jurisdiction – High Court – Dispute over compensation for acquisition and apportionment – High Court sitting as land reference court – Whether seized with jurisdiction to award pre-judgment and post-judgment interests – Whether seized with jurisdiction to order co-applicant to pay interest to another co-applicant – Whether there was imposition of pre-judgment and post-judgment*
D *interests on interested person in land acquisition cases – Whether order for release of monies deposited into court constituted judgment – Whether attracts award of pre-judgment or post-judgment interests – Land Acquisition Act 1960, ss. 29A(5), 32(1), (1B) & 48 – Land Acquisition (Amendment) Act 1997, ss. 16, 17 & 26*

E ***LAND LAW:*** *Acquisition – Compensation – Interest – Pre-judgment and post-judgment interests – Whether High Court sitting as land reference court seized with jurisdiction to award pre-judgment and post-judgment interests – Whether seized with jurisdiction to order co-applicant to pay interest to another co-applicant – Whether there was imposition of pre-judgment and post-judgment interests on interested person in land acquisition cases – Land Acquisition Act 1960, ss. 29A(5),*
F *32(1), (1B) & 48 – Land Acquisition (Amendment) Act 1997, ss. 16, 17 & 26*

The first respondent, Bungsar Hill Holdings Sdn Bhd ('Bungsar Hill'), was the registered proprietor of a piece of land in Damansara, Kuala Lumpur, which was compulsorily acquired for the construction of the SPRINT Expressway. The appellant, Damansara Realty Bhd ('Damansara Realty'), applied to the
G second respondent, the Land Administrator of the Federal Territory of Kuala Lumpur ('the LA'), claiming an interest in the said land. Dispute arose between Damansara Realty and Bungsar Hill as to which party was entitled to the compensation of the acquisition and its apportionment. The LA filed an originating summons at the High Court ('S3 action') and the High Court
H ordered that 75% of the compensation amount (RM6,856,597.50), together with 8% late payment charges (RM802,503.68), be deposited into the High Court. The LA deposited a total of RM7,659,101.18 into the High Court. Damansara Realty, Bungsar Hill and Sistem Penyuraian Trafik KL Barat Sdn Bhd then initiated a land reference proceeding against the LA
I ('S4 action') and the issue of the compensation amount was resolved through a consent order. The terms of the consent order stipulated that (i) a further compensation amount of RM425,505 was to be paid and deposited into the High Court; and (ii) there would be no order as to costs and interest. Bungsar

Hill filed a notice of application in the S3 and S4 actions, respectively, seeking orders that (i) the deposits be released to Bungsar Hill ('prayer 1'); (ii) Damansara Realty pays Bungsar Hill interest at 8% per annum ('prayer 2') on (a) the sum of RM6,856,597.50 deposited into the court under the S3 action beginning from 8 July 2002 to the date of realisation; and (b) the sum of RM425,505 deposited into the court pursuant to the consent order in the S4 action beginning from 22 November 2007 to the date of realisation; and (iii) Damansara Realty pays Bungsar Hill costs of the proceedings and/or of the applications ('prayer 3'). The Senior Assistant Registrar ('the SAR') allowed prayer 1 and later, the Deputy Registrar ('the DR') allowed prayer 2 and, in respect of prayer 3, ordered Damansara Realty to pay costs to Bungsar Hill for the applications in respect of the S3 and S4 actions and dismissed Bungsar Hill's application for costs of the same. The parties appealed against the decision of the DR to the judge-in-chambers; Damansara Realty appealed against the decision on interest while Bungsar Hill appealed against the decision on costs. In respect of the appeal in the S3 action, the Judicial Commissioner ('the JC') ordered (i) that Bungsar Hill would be paid interest on the sum of RM7,659,101.18 at the rate of 2% per annum by the Accountant General; and (ii) Damansara Realty to pay to Bungsar Hill (a) pre-judgment interest at a rate of 3% per annum on the principal sum of RM6,856,597.80 from 10 July 2002 to 30 April 2013; (b) post-judgment interest at a rate of 5% per annum on the sum of RM7,659,101.18 from 1 May 2013 to 21 October 2013; and (c) costs of RM40,000. Meanwhile, in respect of the S4 action, the JC ordered that (i) Bungsar Hill be paid interest on the sum of RM425,505 at a rate of 2% per annum by the Accountant General; and (ii) there be no order as to interest or costs to Damansara Realty. The JC also held that s. 11 of the Civil Law Act 1956 ('the CLA') does not preclude interest being claimed in respect of a debt due from a party in circumstances where the person from whom interest is being claimed was responsible for the delay in the discharge of debt. Hence, the present appeal. The issue that arose for the court's determination was whether the High Court, sitting as the land reference court under the Land Acquisition Act 1960 ('the Act'), had jurisdiction and power to (i) award interest on the land acquisition on the 8% late payment charges both deposited into the court by the LA; and (ii) order a co-applicant to pay another co-applicant such interest.

Held (allowing appellant's appeal in S3 action with costs)
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) The Act does not confer any jurisdiction on the court to order the imposition of pre-judgment and post-judgment interests and for an interested person under the Act to pay interest. Sections 29A(5), 32(1) and (1B) and 48 of the Act expressly specify 'late payment charges' at the rate of 8% per annum for a specified period of time and nothing more. This would necessarily mean that the imposition of pre-judgment and post-judgment interests on an interested person in land acquisition

cases are excluded. The imposition of interest had, by way of legislation, been intentionally excluded from the land acquisition scheme in Malaysia. The Land Acquisition (Amendment) Act 1997 had, by ss. 16, 17 and 26 specifically amended the Act by substituting the words 'late payment charges' for the word 'interest' appearing in ss. 29A(5), 32 and 48 of the Act. When an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately. (paras 34 & 37-39)

(2) The court could not exercise its inherent powers beyond or outside the court's jurisdiction or where the court has no jurisdiction. The land reference court in this appeal did not have the jurisdiction to award interest and as such, there was no inherent power in that context to begin with. (para 43)

(3) The S3 and S4 actions were proceedings initiated under the Act. Both actions were not proceedings for the recovery of debts or damages. Therefore, the JC erred in law when he concluded that s. 11 of the CLA did not preclude interest being claimed in respect of a debt due from a party in circumstances where the person from whom interest is being claimed was responsible for the delay in the discharge of debt. The present appeal did not fall under the purview of s. 11 of the CLA as there was no debt owing by Damansara Realty to Bungsar Hill nor were there monies belonging to Bungsar Hill being kept by Damansara Realty. The monies were in the deposit accounts of the High Court and/or the LA. As such, there was no basis for Damansara Realty to bear the interest on the said monies. Furthermore, an order for the release of monies deposited into the court is not a judgment and does not attract the award of pre-judgment or post-judgment interest. (paras 45 & 47)

Bahasa Malaysia *Headnotes*

Responden pertama, Bungsar Hill Holdings Sdn Bhd ('Bungsar Hill'), adalah pemilik berdaftar sebidang tanah di Damansara, Kuala Lumpur, yang telah diambil secara wajib bagi pembinaan Lebuh Raya SPRINT. Perayu, Damansara Realty Bhd ('Damansara Realty'), memohon pada responden kedua, Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur ('PT'), kepentingan dalam tanah tersebut. Pertikaian timbul antara Damansara Realty dan Bungsar Hill berkenaan pihak yang berhak mendapat pampasan bagi pengambilan tersebut dan pembahagiannya. Pentadbir Tanah memfailkan saman pemula di Mahkamah Tinggi ('tindakan S3') dan Mahkamah Tinggi memerintahkan 75% daripada jumlah pampasan (RM6,856,597.50), bersama-sama dengan caj bayaran lewat sebanyak 8% (RM802,503.68), didepositkan dalam Mahkamah Tinggi. Pentadbir Tanah mendepositkan jumlah total RM7,659,101.18 dalam Mahkamah Tinggi. Damansara Realty, Bungsar Hill dan Sistem Penyuraian Trafik KL Barat Sdn Bhd seterusnya memulakan prosiding rujukan tanah terhadap PT ('tindakan S4') dan isu jumlah pampasan diselesaikan melalui perintah persetujuan.

Terma-terma perintah persetujuan menyatakan (i) satu pampasan lanjut berjumlah RM425,505 hendaklah dibayar dan didepositkan dalam Mahkamah Tinggi; dan (ii) tiada perintah terhadap kos dan faedah. Bungsar Hill memfailkan notis permohonan dalam tindakan S3 dan S4, memohon perintah-perintah agar (i) deposit-deposit diserahkan kepada Bungsar Hill ('permohonan 1'); (ii) Damansara Realty membayar kepada Bungsar Hill faedah sebanyak 8% setahun ('permohonan 2') atas (a) jumlah RM6,856,597.50 yang didepositkan dalam mahkamah bawah tindakan S3 bermula dari 8 Julai 2001 hingga tarikh realisasi; dan (b) jumlah RM425,505 yang didepositkan dalam mahkamah susulan perjanjian persetujuan dalam tindakan S4 bermula dari 22 November 2007 hingga tarikh realisasi; dan (iii) Damansara Realty membayar kepada Bungsar Hill kos prosiding dan/atau permohonan-permohonan ('permohonan 3'). Penolong Kanan Pendaftar membenarkan permohonan 1 dan kemudian, Timbalan Pendaftar ('TP') membenarkan permohonan 2 dan, bagi permohonan 3, memerintahkan Damansara Realty membayar kepada Bungsar Hill kos bagi permohonan-permohonan dalam tindakan S3 dan S4 dan menolak permohonan Bungsar Hill bagi kos tindakan yang sama. Pihak-pihak merayu terhadap keputusan TP kepada hakim dalam kamar; Damansara Realty merayu terhadap keputusan berkenaan faedah manakala Bungsar Hill merayu terhadap keputusan tentang kos. Bagi rayuan terhadap tindakan S3, Pesuruhjaya Kehakiman ('PK') memerintahkan (i) agar Bungsar Hill dibayar faedah bagi jumlah RM7,659,101.18 pada kadar 2% setahun oleh Akauntan Negara; dan (ii) Damansara Realty membayar kepada Bungsar Hill (a) faedah pra-penghakiman pada kadar 3% setahun berdasarkan jumlah prinsipal RM6,856,597.80 dari 10 Julai 2002 hingga 30 April 2013; (b) faedah pasca penghakiman pada kadar 5% berdasarkan jumlah RM7,659,101.18 dari 1 Mei 2013 hingga 21 Oktober 2013; dan (c) kos RM40,000. Bagi tindakan S4 pula, PK memerintahkan (i) Bungsar Hill membayar faedah bagi jumlah RM425,505 pada kadar 2% setahun oleh Akauntan Negara; dan (ii) tiada perintah terhadap faedah atau kos terhadap Damansara Realty. Pesuruhjaya Kehakiman juga memutuskan bahawa s. 11 Akta Undang-undang Sivil 1956 ('AUUS') tidak mengecualikan faedah daripada dituntut bagi hutang yang terhutang oleh satu pihak dalam hal keadaan seseorang, yang daripadanya faedah dituntut, bertanggungjawab terhadap kelewatan pelepasan hutang. Maka timbul rayuan ini. Isu yang timbul bagi pertimbangan mahkamah adalah sama ada Mahkamah Tinggi, bersidang sebagai mahkamah rujukan tanah bawah Akta Pengambilan Tanah 1960 ('Akta'), mempunyai bidang kuasa dan kuasa (i) mengawardkan faedah terhadap pengambilan tanah secara wajib dengan caj 8% bayaran lewat yang kedua-duanya didepositkan dalam mahkamah oleh PT; dan (ii) memerintahkan pemohon bersama membayar seorang lagi pemohon bersama faedah sedemikian.

Diputuskan (membenarkan rayuan perayu dalam tindakan S3 dengan kos) Oleh Umi Kalthum Abdul Majid HMR menyampaikan penghakiman mahkamah:

(1) Akta tidak memperuntukkan apa-apa bidang kuasa buat mahkamah untuk memerintahkan pengenaan faedah pra-penghakiman dan pasca penghakiman dan bagi orang berkepentingan bawah Akta membayar faedah. Seksyen 29A(5), 32(1) dan (1B) dan 48 Akta memperuntukkan dengan nyata 'caj bayaran lewat' pada kadar 8% setahun bagi tempoh masa yang ditetapkan dan tidak lebih. Ini semestinya bermaksud pengenaan faedah pra-penghakiman dan pasca penghakiman atas orang yang berkepentingan dalam kes-kes pengambilan tanah secara wajib dikecualikan. Pengenaan faedah telah, melalui perundangan, sengaja dikecualikan daripada skima pengambilan tanah secara wajib di Malaysia. Akta Pengambilan Tanah (Pindaan) 1997 telah, melalui ss. 16, 17 dan 26, dengan khusus meminda Akta dengan menggantikan perkataan-perkataan 'caj bayaran lewat' dengan perkataan 'faedah' dalam ss. 29A(5), 32 dan 48 Akta. Apabila Akta pindaan menukar bahasa statut prinsipal, penukaran tersebut mesti dianggap sengaja dibuat.

(2) Mahkamah tidak boleh menjalankan kuasa inherennya melampaui atau luar bidang kuasanya atau batasan yang mahkamah tiada bidang kuasa. Mahkamah rujukan tanah dalam rayuan ini tidak berbidang kuasa mengawardkan faedah dan dengan itu, tiada kuasa inheren dalam konteks sedemikian dari awal lagi.

(3) Tindakan S3 dan S4 adalah prosiding yang dimulakan bawah Akta. Kedua-dua tindakan bukan prosiding bagi mendapatkan semula hutang atau ganti rugi. Oleh itu, PK terkhilaf bawah undang-undang apabila menyimpulkan s. 11 AUUS tidak mengecualikan feadah daripada dituntut bagi hutang yang terhutang oleh satu pihak dalam hal keadaan seseorang yang daripadanya faedah dituntut bertanggungjawab terhadap kelewatan pelepasan hutang. Rayuan ini tidak terangkum bawah skop s. 11 AUUS kerana tiada hutang yang terhutang oleh Damansara Realty pada Bungsar Hill mahupun wang milik Bungsar Hill disimpan oleh Damansara Realty. Kesemua wang ini didepositkan dalam akaun Mahkamah Tinggi dan/atau PT. Oleh itu, tiada asas buat Damansara Realty menanggung faedah wang tersebut. Tambahan lagi, satu perintah pelepasan wang yang didepositkan dalam mahkamah bukan penghakiman dan tidak membangkitkan award faedah pra-penghakiman dan pasca penghakiman.

Case(s) referred to:

Damansara Realty Bhd v. Bungsar Hill Holdings Sdn Bhd & Anor [2011] 9 CLJ 257 FC ***(refd)***

DR Fraser & Co v. Canada Minister of National Revenue [1949] AC 24 ***(refd)***

Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***

Newall v. Tunstall [1971] 1 WLR 105 ***(refd)***

Panflex Sdn Bhd v. Amalan Tepat Sdn Bhd [2012] 2 CLJ 687 FC ***(refd)***
Parkson Corporation Sdn Bhd v. Fazaruddin Ibrahim [2002] 4 CLJ 18 CA ***(refd)***
Pasmore v. Oswaldtwistle Urban District Council [1898] AC 387 ***(refd)***
Wilkinson v. Barking Corporation [1948] 1 KB 721 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 11
Courts of Judicature Act 1964, s. 25(2), Schedule item 7
Land Acquisition Act 1960, ss. 29(2), 29A(5), 32(1), (1B), 37, 48
Rules of Court 2012, O. 90 rr. 6, 7

For the appellant - Richard WG Lee, Teh Eng Lay & Ong Ing Hoo; M/s Richard Lee
For the 1st respondent - Tommy Thomas, Alan Adrian Gomez & Anita Natalia; M/s Tommy Thomas
For the 2nd respondent - Narkunavathy Sundareson; SFC

[Editor's note: For the High Court judgment, please see Bungsar Hill Holdings Sdn Bhd & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur & Another Appeal [2015] 1 CLJ 553 (overruled).]

Reported by Najib Tamby

JUDGMENT

Umi Kalthum Abdul Majid JCA:

Introduction

[1] This was an appeal by Damansara Realty Berhad (Damansara Realty/ the appellant) and the cross-appeals by Bungsar Hill Holdings Sdn Bhd (Bungsar Hill/the first respondent) against the decision of the learned Judicial Commissioner (JC) (as he then was).

[2] The appeal arose from an appeal to the judge-in-chambers against the decision of the Deputy Registrar (DR) of the High Court who awarded pre-judgment interest of 8% per annum and post-judgment interest of 5% per annum on sums deposited into court in respect of a land reference matter.

[3] For the purpose of this appeal, parties will be referred to as they were at the High Court.

Background Facts

[4] Bungsar Hill is the registered proprietor of a piece of land in Damansara, Kuala Lumpur. Part of the land was compulsorily acquired for the construction of the SPRINT Expressway sometime in December 2000.

[5] Damansara Realty had in May 2001 applied to the respondent/second respondent Land Administrator Federal Territory of Kuala Lumpur (the Land Administrator) claiming an interest in the land through a lease agreement.

[6] There was a dispute between Damansara Realty and Bungsar Hill as to which party was entitled to the acquisition compensation as well as over the apportionment of the compensation.

[7] The Land Administrator, pursuant to s. 29(2) of the Land Acquisition Act 1960 (LAA), had on 28 June 2001 filed an application *vide* Kuala Lumpur *Ex-Parte* Originating Summons No. S3-21-90-2001 (S3 action) and on 7 November 2001, the court ordered that 75% of the compensation amount for the entire acquired land together with the 8% late payment charges be deposited in the High Court. The Land Administrator deposited in the High Court the said 75% of the compensation amounting to RM6,856,597.50 together with the 8% late payment charges of RM802,503.68, totalling RM7,659,101.18.

[8] A land reference proceeding was then initiated *vide* Kuala Lumpur High Court Land Reference No. S4-15-13-2003 (S4 action) with Damansara Realty, Bungsar Hill and Sistem Penyuraian Trafik KL Barat Sdn Bhd (SPRINT) as the applicants and the Land Administrator as the respondent. Subsequently, the parties resolved the issue of the compensation amount *vide* a consent order dated 22 November 2007 (consent order). One of the terms of the consent order stipulated that a further compensation amount of RM425,505 was to be paid and deposited in the High Court. The said sum was deposited on 17 January 2008. The consent order had also stipulated that there "be no order as to costs and interest".

[9] As such, the remaining issue between Damansara Realty and Bungsar Hill was to whom the deposits were payable and the apportionment of the said deposits.

[10] Subsequently, the above-mentioned issue became academic when the Federal Court, in another set of proceedings involving a contractual dispute between Damansara Realty and Bungsar Hill held that Damansara Realty's rights over the land concerned were validly terminated by Bungsar Hill. (See *Damansara Realty Bhd v. Bungsar Hill Holdings Sdn Bhd & Anor* [2011] 9 CLJ 257; [2011] 6 MLJ 464.)

[11] However, on 11 March 2013, Bungsar Hill filed a notice of application in the S3 action and the S4 action respectively. These applications were premised on s. 37 of the LAA, praying for the following orders:

(a) the deposits be released to the Bungsar Hill (prayer (1));

(b) Damansara Realty pays Bungsar Hill interest at 8% per annum (prayer (2)) on:

(i) the said sum of RM6,856,597.50 deposited in court under the S3 action beginning from 8 July 2002 to date of realisation; and

(ii) the said sum of RM425,505.00 deposited in court pursuant to the consent order in the S4 action beginning from 22 November 2007 to date of realisation;

(c) Damansara Realty pays Bungsar Hill costs of the proceedings and/or of the applications (prayer (3)).

[12] The learned Senior Assistant Registrar of the Kuala Lumpur High Court had on 30 April 2013 allowed prayer 1 and accordingly ordered the said deposits to be released to Bungsar Hill.

[13] Then, on 23 September 2013, the learned DR of the Kuala Lumpur High Court allowed prayer two and ordered, in respect of the S3 action, that Damansara Realty pay Bungsar Hill pre-judgment interest at the rate of 8% per annum on the sum of RM6,856,597.50 from 8 July 2002 until 30 April 2013 and post-judgment interest at the rate of 5% per annum on the said sum of RM6,856,597.50 from 1 May 2013 until the date of payment of the said sum of RM6,856,597.50 to Bungsar Hill.

[14] Meanwhile, in respect of the S4 action, the learned DR ordered Damansara Realty to pay Bungsar Hill pre-judgment interest at the rate of 8% per annum on the sum of RM425,505 from 22 November 2007 until 30 April 2013 and post-judgment interest at the rate of 5% per annum on the said sum of RM425,505 from 1 May 2013 until the date of payment of the said sum of RM425,505 to Bungsar Hill.

[15] On 7 February 2014, the learned DR made orders in respect of prayer three regarding costs, whereby Damansara Realty was to pay costs to Bungsar Hill for the respective applications in the amount of RM2,500 in respect of the S3 action and S4 action, but Bungsar Hill's application for costs of the S3 and S4 proceedings was dismissed.

[16] *Vide* notice of appeal to the judge-in-chambers, Damansara Realty appealed against the learned DR's decision on interest and Bungsar Hill appealed against the learned DR's decision on costs.

At The High Court

[17] The learned JC, heard the said appeals and made the following orders in respect of the appeal in the S3 action:

(a) Bungsar Hill be paid interest on the sum of RM7,659,101.18 at the rate of 2% per annum by the Accountant General pursuant to and in accordance with O. 90 rr. 6 and 7 of the Rules of Court 2012 (ROC) and Circular 1/1998 from 1 August 2002 to 30 September 2013;

(b) Damansara Realty pays to Bungsar Hill:

(i) pre-judgment interest at rate of 3% per annum on the principal sum of RM6,856,597.80 from 10 July 2002 to 30 April 2013;

(ii) post-judgment interest at a rate of 5% per annum on the sum of RM7,659,101.18 from 1 May 2013 to 21 October 2013; and

(iii) costs of RM40,000.

[18] Meanwhile, in respect of the S4 action, the learned JC ordered the following:

(a) Bungsar Hill be paid interest on the sum of RM425,505 at the rate of 2% per annum by the Accountant General pursuant to and in accordance with O. 90 rr. 6 and 7 of the ROC and Circular 1/1998 from 1 February 2008 to 30 September 2013; and

(b) that there be no order as to interest or costs to Damansara Realty.

[19] The learned JC found that the High Court does indeed have the jurisdiction to award both pre-judgment and post-judgment interests in respect of a compensation sum awarded under the LAA.

[20] The learned JC also found that it is the court's discretion to award interest on sums paid into court by the Land Administrator against a co-claimant in a land reference proceeding, notwithstanding that the co-claimant did not have the use of the money for the relevant period.

[21] The learned JC also found that on a proper construction of the consent order in the S4 action, the term of the order on costs and interest precludes Bungsar Hill from claiming costs and interest in that action.

[22] With reference to O. 90 r. 6 of the ROC, the learned JC found that since there was a delay on the part of the Bungsar Hill in applying for the release of the compensation sums immediately after the decision of the Federal Court on 11 October 2011, Damansara Realty ought not be made liable for pre-judgment interest for the period between 12 October 2011 to 11 March 2013.

[23] The learned JC also supplemented the orders of the learned Senior Assistant Registrar by ordering that interest at the rate of 2% per annum be paid to Bungsar Hill in respect of the sums deposited into court in the S3 action and the S4 action.

[24] Aggrieved by the decision of the learned JC, both Damansara Realty and Bungsar Hill filed their notice of appeal and the notice of cross appeal respectively against that decision.

[25] Damansara Realty, in respect of the S3 action only, appealed against part of the decision that ordered Damansara Realty to pay Bungsar Hill (i) pre-judgment interest at the rate of 3% per annum on the principal sum of RM6,856,597.80 from 10 July 2002 to 30 April 2013; (ii) post-judgment interest at the rate of 5% per annum on the sum of RM7,659,101.18 from 1 May 2013 to 21 October 2013; and (iii) costs of RM40,000.

[26] Bungsar Hill's notice of cross appeal, in respect of the S3 action, was on the percentage the pre-judgment interest payable to Bungsar Hill by Damansara Realty to be at the rate of 8% per annum or in the alternative at the rate of 6% per annum on the sum of RM7,659,101.18 deposited into court. Bungsar Hill's notice of cross appeal was, in respect of the S4 action,

on the percentage of the pre-judgment interest payable to Bungsar Hill by Damansara Realty to be at the rate of 8% per annum or in the alternative to be at the rate of 6% per annum on the sum of RM425,505 deposited into court; post-judgment interest at the rate of 5% per annum; and costs of Bungsar Hill's application in encl. 39 and its appeal in encl. 49.

The Appeal

[27] The crux of this appeal is whether the High Court sitting as the land reference court under the LAA has the jurisdiction and the power to:

(a) award interest on the land acquisition compensation and on the 8% late payment charges both deposited into court by the Land Administrator; and

(b) order a co-applicant to pay to another co-applicant such interest.

[28] It was Damansara Realty's contention that the LAA does not confer any jurisdiction on the court to order the imposition of either pre-judgment interest or post-judgment interest on the sums deposited into the court. The LAA also does not provide for an interested person to pay interest.

[29] Reference was made to ss. 29A(5), 32(1), (1B) and 48 of the LAA where these provisions clearly spell out in express terms late payment charges are to be paid by the Land Administrator.

[30] Damansara Realty contended that any other form of remedy such as pre-judgment and post-judgment interests as sought by Bungsar Hill are not available in land acquisition cases.

[31] In addition, Damansara Realty pointed out that the specified rate of 8% per annum for a specified period of time for late payment charges in ss. 29A(5), 32(1), (1B) and 48 of the LAA implied the exclusion from land acquisition cases of any imposition of pre-judgment interest and post-judgment interest on an interested person.

[32] Damansara Realty further contended that item 7 of the Schedule to the Courts of Judicature Act 1964 (CJA), in respect of interest, does not assist Bungsar Hill in claiming for the pre-judgment and post-judgment interests. Section 25 of the CJA provides that those additional powers given to the courts, including the said item 7, are only to be exercised in accordance with any written law or rules of court. In this appeal, the relevant written law is the LAA which only specifies for late payment charges to be paid by the Land Administrator whilst the relevant rules of court can be found in O. 90 rr. 6 and 7 of the ROC read together with Circular 1/1998 both of which only provide for interest to be paid by the Minister of Finance/Accountant General.

[33] Damansara Realty also contended that Bungsar Hill's reliance on the court's inherent powers was misplaced as the inherent powers cannot be used to make orders which are outside the ambit of the LAA.

Decision Of The Court

[34] We agreed with the submissions of learned counsel for Damansara Realty that the LAA does not confer any jurisdiction on the court to order the imposition of pre-judgment and post-judgment interests and for an interested person under the LAA to pay interest.

[35] We refer to the Court of Appeal case of *Parkson Corporation Sdn Bhd v. Fazaruddin Ibrahim* [2002] 4 CLJ 18; [2002] 4 AMR 3951 where this court, per Gopal Sri Ram (JCA) (as he then was), had referred to the cases of *Pasmore v. Oswaldtwistle Urban District Council* [1898] AC 387 and *Wilkinson v. Barking Corporation* [1948] 1 KB 721 for the principles of statutory interpretation as follows:

> The present case accordingly falls to be covered by the established principle, which deals with the consequences of Parliament providing novel or new remedy. The principle is ancient. It has been adverted to in numerous cases. We do not propose to go through them all here. Suffice that we mention the seminal cases. Of these the first is *Pasmore v. Oswaldtwistle Urban District Council* [1898] AC 387, where (at p 394) the Earl of Halsbury LC said:
>
> > The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.
>
> The second is *Wilkinson v. Barking Corporation* [1948] 1 KB 721, where at p. 724, we find Asquith LJ saying this:
>
> > It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

[36] Justice Gopal Sri Ram elaborated further in the same case at p. 25 (CLJ); p. 3961 (MLJ), lines 1 to 7, as follows:

> If Parliament had wished to confer jurisdiction upon a court making an order under s. 16 to also award damages, it would have said so expressly. It is therefore plain what Parliament intended was to only criminally punish the infringer of merchandising marks and the perpetrator of any other act or omission specifically proscribed by the Act. We therefore, with as much respect as we can gather, reject the principle submission made by Encik Shaari Nor about the way in which s. 16 should be construed.

[37] Applying those principles of statutory interpretation to this appeal, we found that ss. 29A(5), 32(1), (1B) and 48 of the LAA expressly specify "late payment charges" at the rate of 8% per annum for a specified period of time

and nothing more. This would necessarily mean that the imposition of pre-judgment interest and post-judgment interest on an interested person in land acquisition cases are excluded. For ease of reference, we reproduce ss. 29A, 32 and 48 of the LAA as follows:

> Withholding of twenty-five per cent of compensation
>
> 29A. (1) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit, then, notwithstanding section 29, the Land Administrator shall, subject to subsection (2), make payment of only seventy-five per cent of the amount of the award, and shall withhold twenty-five per cent thereof until the amount of compensation is finally determined either by the Court under section 47 or, if there is an appeal or further appeal pursuant to section 49, on the appeal or further appeal, under the following circumstances:
>
> (a) before the expiry of six weeks from the date of service of Form H on the Government, person or corporation on whose behalf such land was acquired; or
>
> (b) if before the expiry of the said period such Government, person or corporation has made an objection under section 37 to the amount of compensation or any other objection which may affect such amount.
>
> (2) If within the period specified in paragraph (1)(a) no such objection as is referred to in paragraph (b) of that subsection is made, then, as soon as may be after the expiry of that period, the Land Administrator shall make to the person entitled thereto payment of the amount withheld under paragraph (a) of that subsection.
>
> (3) If such final determination results in a reduction of the amount of compensation, the amount withheld or so much thereof as equals the amount of the reduction, as the case may be, shall become free of all claims in respect of the compensation, and the remainder, if any, shall, as soon as may be, be paid to the person entitled thereto.
>
> (4) If such final determination does not result in a reduction of the amount of compensation, the amount withheld shall, as soon as may be, be paid to the person entitled thereto.
>
> (5) The Land Administrator shall pay on every amount paid under subsection (3) or (4) **late payment charges at the rate of eight per cent per annum** from the time of payment of seventy-five per cent of the amount of the award until the time of payment of the first-mentioned amount.
>
> Late payment charges
>
> 32. (1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with **late payment charges thereon at the rate of eight per cent per annum** from the **due date** until the time of such payment or deposit.
>
> (1A) In its application to an award the payment of which is subject to section 29A, subsection (1) shall be construed as if the reference therein to the amount awarded were a reference to seventy-five per cent of the amount awarded.

A (1B) Where, in the case of an award the payment of which is subject to subsection 29A(1), seventy-five per cent of the amount of the award is not paid or deposited on or before the **due date** in relation to the land in respect of which the award is made, the Land Administrator shall pay on the amount paid under subsection (3) or (4) of that section **late payment charges at the rate of eight per cent per annum** from the **due date** until the time of payment or deposit of seventy-five per cent of the amount of the award.

(1C) In this section **"due date"** in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under subsection 16(1) in respect of the land, whichever is the earlier.

(2) Where any valuation is made under section 28 relating to any difference in area found on final survey, there shall be added to the amount of such valuation late payment charges thereon at the rate of eight per cent per annum from the date at which possession was taken or compensation paid, whichever shall have been the earlier; and the Land Administrator shall, as the case may require, either pay any such amount and late payment charges to the person interested, or obtain from him a refund thereof."

Land Administrator may be required to pay late payment charges

48. If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator shall pay **late payment charges on such excess at the rate of eight per cent per annum** from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested.

(emphasis added)

[38] Moreover, it must be noted here that the imposition of interest had, *vide* legislation, been intentionally excluded from the land acquisition scheme in Malaysia. The Land Acquisition (Amendment) Act 1997 (Act A999), which came into force on 1 February 1998 [PU(B) 94/1998], had by ss. 16, 17 and 26 specifically amended the LAA by substituting the words "late payment charges" for the word "interest" appearing in ss. 29A(5), 32 and 48 of the LAA.

[39] Thus, when an amending act alters the language of the principal statute, the alteration must be taken to have been made deliberately. (See *DR Fraser & Co v. Canada Minister of National Revenue* [1949] AC 24). We, therefore, with respect, found the learned JC had, in para. 21 of his grounds of judgment, erred in holding that "the principle enunciated in *Parkson Corporation Sdn Bhd v. Fazaruddin Ibrahim* would not apply in the case of the LAA to preclude a party to claim interest on a compensation sum, even though such interest had not been specifically provided for in the LAA".

[40] With respect, we were also of the view that the learned JC had erred when he ruled that the interest payable under O. 90 r. 6 of the ROC accrued as of right to the beneficiary of the sum deposited into court and the right of Bungsar Hill to the 2% interest per annum remains unaffected by the consent order in the S4 action.

[41] Item 7 of the Schedule to the CJA, in respect of interest, read together with s. 25(2) of the CJA, clearly shows that item 7 is only to be exercised in accordance with any written law or rules of court. The same are reproduced herewith:

> SCHEDULE
> (Section 25 (2))
>
> Interest.
>
> 7. Power to direct interest to be paid on debts, including judgment debts, or on sums found due on taking accounts between the parties, or on sums found due and unpaid by receivers or other persons liable to account to the Court.
>
> Powers of the High Court.
>
> 25. (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
>
> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
>
> **Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same**.
>
> (emphasis added)

[42] In this present appeal, the relevant written law is the LAA and the LAA has clearly provided that late payment charges are to be paid by the Land Administrator.

[43] In addition to that, Bungsar Hill's reliance on the inherent powers of the court on its claim for interest was misplaced as the court could not exercise its inherent powers beyond or outside the court's jurisdiction or where the court has no jurisdiction. In this appeal, the land reference court does not have the jurisdiction to award interest and as such, there was no inherent power in that context to begin with. We refer to the Federal Court case of *Panflex Sdn Bhd v. Amalan Tepat Sdn Bhd* [2012] 2 CLJ 687; [2012] 2 MLJ 168 where Mohd Ghazali (FCJ) (as he then was) at p. 711 (CLJ) para. [41]; p. 185 (MLJ) para. [44], held as follows:

> ... We are also of the view that inherent powers of this court do not confer or constitute a source of jurisdiction. We would reiterate that this court must not do anything unconstitutional ...

[44] In the Supreme Court case of *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544, Abdul Hamid Omar (LP) (as he then was) at p. 192 (CLJ); p. 549 (MLJ), para. e left, held as follows:

> ... The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. Where the legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions.

[45] It is also germane to note that the S3 and S4 actions were proceedings initiated under the LAA. Both S3 and S4 actions were not proceedings for the recovery of debts or damages. Thus, with respect, the learned JC had erred in law when he concluded that s. 11 of the Civil Law Act 1956 (CLA) did not preclude interest being claimed in respect of a debt due from a party in circumstances where the person from whom interest is being claimed was responsible for the delay in the discharge of the debt. By referring to the *Oxford English Dictionary* on the meaning of "debt", the learned JC concluded that "debt" shall include the compensation due to be paid to a claimant in a land reference proceeding. We found that the present appeal did not fall under the purview of s. 11 of the CLA as there was no debt owing by Damansara Realty to Bungsar Hill nor were there monies belonging to Bungsar Hill being kept by Damansara Realty. The monies were in the deposit accounts of the High Court and/or the Land Administrator. As such, there was no basis whatsoever for Damansara Realty to bear the interest on the said monies.

[46] Further, s. 11 of the CLA relates to a "cause of action" and a "judgment". There was no cause of action as against Damansara Realty nor any judgment against the same in both the S3 and S4 actions. Instead, the S3 and S4 actions were in respect of the release of compensation monies from the deposit accounts. Damansara Realty was not adjudged liable to pay the compensation monies. Thus, s. 11 of the CLA could not be relied upon by Bungsar Hill in its attempt to seek an award of interest against Damansara Realty.

[47] It is also settled law that an order for the release of monies deposited into court is not a judgment and does not attract the award of pre-judgment or post-judgment interest. (See: *Newall v. Tunstall* [1971] 1 WLR 105.)

Cross-Appeals

[48] As the cross appeal in regard to the S3 action raised similar issues as the appeal by Damansara Realty, we did not see the need to address the said cross appeal specifically. We noted that in respect of the cross appeal in the S4 action, Bungsar Hill had eventually decided not to pursue the matter.

Conclusion

[49] Based on the aforementioned reasons, we unanimously allowed Damansara Realty's appeal in respect of the S3 action with costs. The High Court order dated 2 December 2014 at para. (B)(i), (ii) and (iii) was set aside. We also unanimously dismissed the cross-appeals in respect of the S3 and S4 actions with costs of RM70,000 for here and below to be paid by Bungsar Hill to Damansara Realty. No costs were awarded against the second respondent. We also ordered the deposit to be refunded.